

FACTSHEET

TITLE: **SPECIAL PERMIT NO. 2002**, requested by Chuck Salem on behalf of Quin-C, Inc. (Fast Break, Inc.), for authority to sell alcoholic beverages for consumption off the premises, on property located at 4801 Randolph Street.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 10/29/03
Administrative Action: 10/29/03

STAFF RECOMMENDATION: Conditional approval.

RECOMMENDATION: **Denial** (6-1: Krieser, Taylor, Marvin, Duvall, Carlson and Steward voting 'yes'; Larson voting 'no'; Bills-Strand absent).

FINDINGS:

1. The staff recommendation to approve this request for authority to sell alcoholic beverages for consumption off the premises, with conditions, is based upon the "Analysis" as set forth on p.3-6, concluding that the convenience store/service station and car wash are currently open and operating on this site. The sale of alcohol for consumption off the premises is considered an accessory use in this instance, and would not significantly increase the impact of this use upon the neighborhood. The licensed premises is located closer than 100' to a residence both south and east, and to a residential district to the east; however, the mitigation plan included as part of this special permit includes measures to reduce the impact upon neighboring properties and is the immediate neighbors have indicated their support.
2. A previous application for off-sale at this location was denied by the Planning Commission on May 1, 2002; approved by the City Council on June 3, 2002; and vetoed by then Mayor Don Wesely on June 5, 2002. This application is the same as the previous Special Permit No. 1970 with two exceptions: A) the mitigation plan has been revised to include comments relating to seating, entertainment and neighbors; and B) the area defined as the licensed premises has been revised—that portion of the building shown as car wash has been excluded, and alcohol will neither be stored nor sold in that area. The applicant states that the area of beer sales will include a glass partition, which was not included in the mitigation plan. Also, since the previous application, the City's decisions on special permits in other locations were upheld, and the Police Department has recognized the process established in the zoning ordinance for reducing the 100 foot standard.
3. The applicant's testimony is found on p.8-9, and the record consists of a petition in support signed by 600 customers (p.23-24). The record also consists of a letter from Tabitha Health Care Services in support (p.25-26). The applicant also indicated that he now has support from the Principal of Lefler Middle School due to the area of beer sales being partitioned off from the remainder of the store.
4. Testimony in opposition is found on p.9-10, and the record consists of three emails in opposition. The ***Plan for Action*** of the Lincoln Neighborhood Alliance was submitted by Carol Brown in opposition (p.30), which states that, "Lincoln should....maintain or strengthen spacing requirements for alcohol sales.". The objections raised by the opposition include setting a precedence, upholding the spacing requirements, encroachment upon a residential neighborhood, exposing alcohol sales to children in the neighborhood, litter, and no establishment of the need for alcohol sales at this location.
5. On 10/29/03, the Planning Commission disagreed with the staff recommendation and voted 6-1 to recommend **denial**, finding that the mitigation plan is insufficient to preserve the health, safety and welfare of the community. The Commission also noted that this same application was denied previously and nothing has changed, except for the glass partitioning of the beer sales area (Commissioner Larson dissenting; Commissioner Bills-Strand absent).
6. **Please Note:** Since the Planning Commission recommendation is denial, the applicant was not required to complete the requirements of the Site Specific conditions of approval normally required to be completed prior to scheduling on the Council agenda. Therefore, a resolution approving this special permit should also include Conditions #1.1 and #1.2.

FACTSHEET PREPARED BY: Jean L. Walker

REVIEWED BY: _____

REFERENCE NUMBER: FS\CC\2003\SP.2002

DATE: November 24, 2003

DATE: November 24, 2003

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for October 29, 2003 PLANNING COMMISSION MEETING

P.A.S.: Special Permit #2002

PROPOSAL: A special permit to allow the sale of alcohol for consumption off the premises.

LOCATION: 4801 Randolph Street

LAND AREA: Approximately 26,700 square feet (.61 acres)

CONCLUSION: The convenience store/service station and car wash are open and operating on this site. The sale of alcohol for consumption off the premises is considered an accessory use in this instance, and would not significantly increase the impact of this use upon the neighborhood. The mitigation plan included as part of this special permit includes measures to reduce the impact upon neighboring properties and is adequate.

<u>RECOMMENDATION:</u>	Conditional Approval
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GENERAL INFORMATION:

LEGAL DESCRIPTION: Lots 3-7, Block 2, Linwood Addition, Lancaster County, Nebraska.

EXISTING ZONING: B-1 Local Business, R-2 Residential

EXISTING LAND USE: Convenience Store/Service Station/Car Wash

SURROUNDING LAND USE AND ZONING:

North	Commercial	B-1
South	Single-family Residential	B-1
East	Single-family Residential	R-2
West	Office	B-1

COMPREHENSIVE PLAN SPECIFICATIONS: The Comprehensive Plan designates commercial land use for the subject property.

ASSOCIATED APPLICATIONS: CZ#3394 - A text change to amend Section 27.62.685©) to include specific mitigation factors to be considered in the review of special permits for the consumption of alcohol off the premises. The applicant requested that the text change not go forward at this time and to have this special permit application reviewed under the existing provisions of the Zoning Ordinance.

HISTORY: SP#1970 - Submitted on **March 21, 2002**, requesting a special permit to allow the sale of alcohol for consumption off the premises at this same location. It was virtually identical to this application and received a recommendation for denial from staff because the licensed premises was located approximately 21' from a residence, and 30' from a residential district. On **May 1, 2002**, the Planning Commission voted to recommend denial by a vote of 6-3 after a public hearing.

On **June 3, 2002**, the City Council voted 4-3 to approve the special permit. The Council resolution was subsequently vetoed by then Mayor Don Wesely on **June 5, 2002**.

ANALYSIS:

OVERVIEW:

This is the site of a former service station which has been demolished. A new facility containing a convenience store, a service station, and a car wash has been constructed on the site. This request is for a special permit to allow the sale of alcoholic beverages for consumption off the premises.

This application is the same as SP#1970 with two exceptions. First, the mitigation plan has been revised (Exhibit B of the application). It now includes comments relating to seating (item #4), entertainment (item #6), and neighbors (item #7) that were not included in the mitigation plan in SP#1970. Second, the area defined as the licensed premises has been revised. That portion of the building shown as car wash has been excluded as there is no door between the two portions of the building, and alcohol will neither be stored nor sold in that area.

The applicant included petitions supporting this application, however many of the petitioners do not reside in the neighborhood. All the petitions may be viewed in the Planning Department.

1. SPECIAL PERMIT REQUIREMENTS PER LINCOLN MUNICIPAL CODE (LMC) 27.63.685:

Alcoholic beverages may be sold for consumption off the premises in the B-1, B-3, H-1, H-2, H-3, H-4, I-1 and I-3 zoning districts upon the approval of a special permit. A special permit for such use may be granted subject to the requirements of the respective districts, all applicable ordinances, and the following conditions, which may be waived by the City Council:

(a) Parking shall be in accordance with LMC Section 27.67.020.

The parking lot on this site is paved, and the number of off-street parking spaces and the design of the parking areas comply with the requirements of Lincoln Municipal Code (LMC).

(b) The sale of alcoholic beverages for consumption on the premises shall not be permitted without issuance of a permit under LMC Section 27.63.680 of this code.

The sale of alcohol for consumption on the premises has not been proposed, and a special permit to allow it has not been requested.

©) The licensed premises of any building approved for such activity must be located no closer than 100 feet from a day care facility, a residential district or residential use, or, if a lesser distance, must mitigate any adverse effects of the reduction in distance through landscaping, screening, or other methods approved by the Planning Director.

The area defined as the licensed premises no longer includes the car wash, and as a result it is 23' further away from the residence and the residential district to the south. However, it is still located closer than 100' to a residence both south and east, and to a residential district to the east. The approximate separation distances are as follows (distances are measured to the store, excluding the car wash):

	Residence	Residential District	Day Care
South	44'	112'	n/a
East	94'	30'	n/a

As stated previously, the mitigation plan has been revised from SP#1970 to include provisions relating to seating, entertainment, and the neighbors. The plan indicates that seating is less than 20% of the floor area; that there will be no live entertainment; and, that the applicant has the consent of 100% of the neighbors abutting the store. The plan also restates all the other provisions of SP#1970, including discontinuing alcohol sales at 10:00 p.m. and planting additional trees beyond the number required to enhance screening.

The layout of the site is such that the licensed premises faces commercial across Randolph Street, abuts the rear yards of the homes to the east, and has the car wash located between it and the abutting residence to the south. A 6' high cedar fence extends along the east and south property lines, with additional trees planted in a 12' wide landscape strip along the east. To enhance the screening effect, a 50-50 mix of evergreen and deciduous trees would provide better year-around screening. Also, planting larger trees to begin with will provide immediate screening. The size of the trees being planted should be a minimum of 2 ½" caliper. It should be noted that the 12' wide landscape strip is the portion of the site zoned R-2, and the sale of alcohol is not allowed in the R-2 district. If approved, this portion of the site must be excluded from the special permit.

The sale of alcohol for consumption off the premises is an accessory use to the convenience store. In this regard, there is a distinction between this use where the sale of alcohol is incidental, versus a bar or other similar use where the sale and/or the consumption of alcohol are the principal uses. The intensity of those uses is generally greater, and they would have more of an impact upon residential areas. Those instances require more scrutiny and potentially different consideration to ensure land use compatibility.

There is already a certain amount of light, noise and traffic associated with the commercial development on this site, but all within the limits of what is reasonably anticipated by the Zoning Ordinance and Comprehensive Plan. The additional impact upon the neighborhood as a result of off-sale at this location should not be significant. Factors such as the layout of the site in relation to the neighborhood and the provisions of the mitigation plan contribute positively towards maintaining compatibility.

(d) Any lighting on the property shall be designed and erected in accordance with all applicable lighting regulations and requirements.

Parking lot lighting must comply with the applicable City of Lincoln Design Standards. Additionally, the mitigation plan notes that caution has been used in the placement of lighting under the gas pump canopy to focus the light where it is needed and away from adjacent properties. To help ensure this, the canopy lights should also be subject to the Design Standards to help contain light on the site.

(e) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.

A drive-through window is not being proposed in conjunction with this facility or with the sale of alcohol.

(f) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.

No such devices are proposed with this special permit.

(g) No access door to the business, including loading or unloading doors, shall face any residential district if such doors are within 150 feet of the residential district. This shall not apply to emergency exit doors required by building or safety codes. No door facing a residential district shall be kept open during the operation of the establishment.

The entrance door faces another commercial property to the north across Randolph Street. There are no doors that open to the residence and residential district to the south and east, respectively.

(h) Vehicular ingress and egress to and from the property shall be designed to avoid, to the fullest extent possible as determined by the City Council, disruption of any residential district. Particular attention shall be given to avoiding designs that encourage use of residential streets for access to the site instead of major streets.

No residential streets are used to access this site.

(i) All other regulatory requirements for liquor sales shall apply, including licensing by the state.

(j) The City Council may consider any of the following as cause to revoke the special permit approved under these regulations:

(1) Revocation or cancellation of the liquor license for the specially permitted premises; or

(2) Repeated violations related to the operation of the permittee's business.

Planning Commission review and City Council approval is required for this use.

2. DEPARTMENT RESPONSES:

POLICE: The Police Department finds that the mitigation plan still shows the licensed premises to be within 100' of a residence and a residential district. Based upon these distances the Police Department is recommending denial. The review goes on to state that they understand that the mitigation plan can be approved at the discretion of the Planning Director.

PUBLIC WORKS: Public Works has no objection to this request.

CONDITIONS:

Site Specific:

1. After the applicant completes the following instructions and submits the documents and plans to the Planning Department and the plans are found to be acceptable, the application will be scheduled on the City Council's agenda:
 - 1.1 Revise the mitigation plan to include a note that states the gas island canopy lights will comply with City of Lincoln Design Standards for Parking Lot Lighting.
 - 1.2 Revise the mitigation plan and the landscape plan to include a planting schedule that shows one-half the number of trees to be planted as upright junipers that exceed 6' in height, planted in an alternating pattern with deciduous trees, and stating the minimum size of the trees planted is 2 ½" caliper.
2. This approval permits the sale of alcohol for consumption off the premises at the convenience store located at 4801 Randolph Street, excluding the east 12' of Lot 3, Block 2, Linwood Addition, based on the accompanying mitigation plan.

Standard:

3. The following conditions are applicable to all requests:
 - 3.1 Before selling alcohol, all development and construction is to comply with the approved plans and the mitigation plan.
 - 3.2 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
 - 3.3 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.

- 3.4 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.

Prepared by:

Brian Will, AICP
Planner

October 15, 2003

OWNER: Quin-C, Inc.
3003 South 13th Street
Lincoln, NE 68502 (402)423-7369

APPLICANT: Fast Break, Inc.
1234 South 14th Street
Lincoln, NE 68502 (402)476-3333

CONTACT: Chuck Salem
1234 South 14th Street
Lincoln, NE 68502 (402)476-3333

SPECIAL PERMIT NO. 2002

PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 29, 2003

Members present: Krieser, Taylor, Duvall, Carlson, Larson, Marvin and Steward; Bills-Strand absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Brian Will of Planning staff submitted two letters in opposition.

Proponents

1. **Chuck Salem** presented the application. He has built a very nice convenience store on the southeast corner of 48th and Randolph. The staff is recommending conditional approval of this application for off-sale liquor and he agrees with all of the proposed conditions. Salem pointed out what he believes to be the positives of the project. This convenience store is a tremendous improvement on that corner for the city and the neighborhood. The applicant has a good record of tobacco and beer sales at all of their stores. In this particular store, the beer sales area has been partitioned to where the school kids and other under-age customers would not be able to be in that area. Salem believes he has tremendous support from the neighborhood, except for the two letters in opposition. The principal at Millard Lefler and the officials at Tabitha Home have both said that they were originally in opposition, but are no longer in opposition because of the area being partitioned. Salem has signed letters from the five adjacent property owners in support. He also has submitted over 500 signatures of customers that came into this store in the first few days that it was open a year ago, and they seem to be people who would rather buy beer there than have to travel up to "O" Street or other locations.

Salem then addressed the 100' distance rule and stated that he has submitted a mitigation plan that has been accepted by the staff. Salem submitted that any noise nuisance is going to occur at the front door. By measuring from the front door (as opposed to the licensed premises), the distance is well over 100' from any residence or residential district in three directions, and 70' from the closest residential district in one direction. That is exactly the area that the mitigation plan addresses, with fence, trees, etc. to keep the noise and light buffered from those residents to the east. In addition, the mitigation plan provides that they will stop selling beer at 10:00 p.m. every evening (otherwise allowed to sell to 1:00 a.m. by the ordinance).

Carlson noted the distances as set forth in the staff report being 44' to a residence to the south, 94' to the east and 30' to a residential district to the east. Salem concurred, pointing out that the staff report measures from the corner of the building that is closest to the residence or residential district. Salem explained that he was trying to change those distances a little bit in his favor by mentioning that most of the noise would occur at the front door. The back corner of the building is not offensive to anyone in the neighborhood. The door opens away from the neighbors; the parking lot is also on the other side of the building and the other side of the fences. Salem suggested that the 100' rule (which probably started out being intended for on-sale) is maybe being applied a little bit unfairly to an off-sale beer license at a convenience store.

Carlson believes the mitigation plan is the same mitigation plan that was submitted with this application previously when it was denied. Salem agreed that it is exactly the same because staff considered it to be a good mitigation plan.

Opposition

1. Kevin Ward, 3754 H Street, officer for the **Witherbee Neighborhood Assn.**, testified in opposition. He strongly disagrees that there is neighborhood support for this special permit. His neighborhood association just found out about this application last night at the 11th hour. The neighborhood association has not had an opportunity to discuss it. The Witherbee Neighborhood was before the Commission recently discussing the proposed Randolph Square, which was going to be a 100 child day care center and 32 apartments. The neighborhood association had over 400 signatures in opposition to that plan and the Commission voted against that plan. If the greater neighborhood knew about this proposal, Ward believes he could have gathered just as much opposition. There were comments in the neighborhood association's previous testimony concerning a proposed Runza on the southwest corner of 40th & Randolph, just eight blocks from this convenience store. He is not sure if Runza is moving in there now or not. What if Runza came forward for a Rock N Roll Runza at that location with a liquor license? This is a "slippery slope". If you allow it at 48th & Randolph, what about others? Does every corner need a liquor license in this town? Ward respectfully requested that this special permit be denied.

2. Carol Brown, board member of **Lincoln Neighborhood Alliance**, testified in opposition, and submitted the Lincoln Neighborhood Alliance "Plan for Action" resolution which, in part, states that, "Lincoln shouldmaintain the 'no more than three unrelated persons per household' ordinance and maintain or strengthen spacing requirements for alcohol sales. ...". This resolution has been endorsed by 21 neighborhood associations. This same application was denied by the Planning Commission less than a year ago. She does not know why it is coming up again. The issue of liquor sales should have been dealt with at the time that the convenience store was built. Someone needs to start looking ahead on these issues.

The City has codes which the neighborhoods expect to be upheld. "We do not want to have to come here all of the time and defend these codes. If you make a waiver for one, what about the next one? It becomes a snowball effect."

3. Margaret Washburn, 619 S. 42nd Street, testified in opposition. She also testified a short time ago asking for help to preserve the quality of life they have in the Witherbee neighborhood, which the Planning Commission supported. Today, she is back asking for the same thing – to help us preserve the quality of this good neighborhood. The location of this business is across the street from the church that has objected. This would be an awful example to these children. She has a hard time recognizing any benefit that would come from plopping down a situation like this right in the middle of a residential neighborhood. Absolutely no good can come from this right in the middle of a residential neighborhood with churches and senior citizens living all around. If people want alcohol that bad, aren't there many, many places where they can obtain it without being in the middle of our good neighborhood? She urged that this special permit be denied.

4. Andy Washburn, 619 S. 42nd Street, testified in opposition. He agreed with Margaret Washburn's testimony. The filling station's main purpose is to sell gasoline and condiments and snacks. The main purpose will still be fulfilled, but alcohol and gasoline do not mix. More people are killed by alcohol than in war. This would be detrimental to our community.

5. Mary Roseberry-Brown testified in opposition. She teaches school and this last week all of the schools spent a lot of time educating kids on staying away from drugs, including alcohol. She has been in this store and it is mobbed with kids after school. She does not like to see the children exposed to the purchase of alcohol.

Staff questions

Marvin asked Rick Peo to discuss the “slippery slope” argument and how it can be avoided. Peo suggested that it can be avoided by applying the standards uniformly in providing protection to everyone. Lincoln does not have a “per se” mandatory 100’ separation requirement—it is a 100 separation requirement, unless there is adequate mitigation approved by the Planning Director. If you are going to allow mitigation, then you are going to have to look at the type of mitigation plan that is approved and apply that consistently on future applications as well. A track record will be established once we start approving mitigation plans. In the past, when we initially adopted this ordinance, we were typically allowing a fence as mitigation between the residence and the store. Then we started denying that as sufficient mitigation. This is probably one of the first coming back where we are trying to come up with what might be a permissible mitigation plan. The problem is that the Commission is always going to have some discretion in approving or denying the mitigation plans, and decisions will be made that will vary. Each application is independent. None are truly identical. It will become a policy thing that will grow. As you approve mitigation plans, you will start coming to some type of uniformity that will repeatedly show up.

Marvin’s comment in response was that there is a lot of turnover on the Planning Commission. It seems like you have a bar that is fluctuating up and down. If there is approval and they try to raise the bar back up, it seems like there is a legal avenue. Peo agreed that there is that likelihood and the city has been to court before because of the 100’ separation when in the past we allowed a 6’ stockade fence. The problem with this ordinance is that it is not a “per se” rule and it does allow for mitigation. Therefore, there has to be the potential for flexibility.

Steward understands that the requirement is to mitigate nuisance between uses and not to regulate any morality of the matter at issue. Peo agreed. The Commission is to be reviewing this on the basis of land use issues and not the sale of alcohol as being a proper or improper thing to do.

Marvin sought clarification of the distance measurements. Brian Will of Planning staff referred to the table in the staff report. The distances listed reflect the distance from what is considered the licensed premises, which refers to that portion of the building in the state liquor license. You can have a building and limit the licensed premises to a portion or all of it. The distances in the staff report refer to the measurements to the nearest residence/residential district/day care from the licensed premises. That does not include the car wash. In the original application, the measurements included the car wash and were made to the footprint of the building. There was no state liquor license issued yet at that time so the measurements were taken at the extremities of the building.

Will also pointed out that the mitigation plan does not include the partitioned portion of the building discussed by the applicant; however, the Planning Commission could ask the applicant to include that as part of the mitigation plan.

Response by the Applicant

Salem agreed that the partitioning is not part of the mitigation plan but he thought it would be a good way to handle it. The partitioned area would be glass with a sliding glass door. It would be easy for

the employees to see if anyone obviously under age is in that part of the store or close to that beer cave, and they could usher them to another part of the store. Steward clarified that there is no difference as far as visibility of product. Salem suggested that the difference is that they would not be able to get to it as easily.

Salem agreed that the staff measurements are accurate. He was just trying to point out that any nuisance would be at the front door.

Salem pointed out that most of the opposition is not against the store, but against how much liquor should be consumed and where it should be purchased. That is not something that he is able to determine. He reminded the Commission that Tabitha Home and Millard Lefler Junior High have not expressed any concern or opposition, and he thinks that says a lot.

As far as the neighborhood, Salem believes he has support of the neighbors for this project. A lot of people would rather stay in the neighborhood to buy beer. He attended the 40th and A Neighborhood Association meeting a year ago. There was no opposition from the 24-25 people that attended that meeting, and at least 2/3rds were very much in favor of the convenience store with off-sale beer.

Salem believes it is important to note that the staff is recommending conditional approval. He did meet with several people from city departments, the Police Chief and at least one of the City Council members, and they gave up on trying to find a set of rules that would solve everything. The City Council member suggested that it be left a little bit gray, and that it is the City Council's job to differentiate between a good project and a good location and a bad project and a bad location.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 29, 2003

Larson moved to approve the staff recommendation of conditional approval. Motion died for lack of a second.

Taylor moved to deny, seconded by Marvin.

Taylor agrees with Tabitha that it is a very good looking building. He thinks it is great that that station is placed there. However, the letter from Tabitha does not say at all that they are in favor of liquor—they just like the way it is run. It is kind of unique that we have enough people here that state their opposition and those that signed the petitions in favor are not here. He also noted that the staff is recommending conditional approval, even though the Police report states that it is within the 100' separation requirement and the Police recommends denial. Our planning staff really needs help in making some of our decisions. It is our job as Planning Commissioners to look at things from another perspective and he thinks the Commissioners are looking at it quite objectively. Maybe this is not a moral issue, but all of the laws are based upon some moral ingredient—some ethics—and it is hard to differentiate the difference between ethics and morals. This is a good example of people concerned about the community. It is incumbent upon the Planning Commission to think in terms of a whole neighborhood, and to think in terms of the spiritual, moral fiber, the economic fiber and viability of our community as well. Taylor supports the convenience store and this is a risk the owner takes in terms of profit.

Carlson stated that he will support the motion to deny because he does not believe there is sufficient mitigation shown to preserve the health, safety and welfare of the community. It is the same analysis he made last year on this same project, and this is completely the same fact pattern we looked at last year. The only new information is the fact that the car wash is no longer to be considered part of the measuring distance. No one assumed there would be alcohol sales in the car wash when we did our

analysis last year. He is supportive of Marvin's comments about uniformity, protection and consistency, and that is one of his concerns. Peo talked about independent fact patterns between applications, but that aside, there should not be independent analysis between the same application. He does not understand why we have the same application with the same fact pattern and a different staff recommendation. We need to do a better job of analyzing not only a similar fact pattern, but previous recommendations. There is not sufficient mitigation.

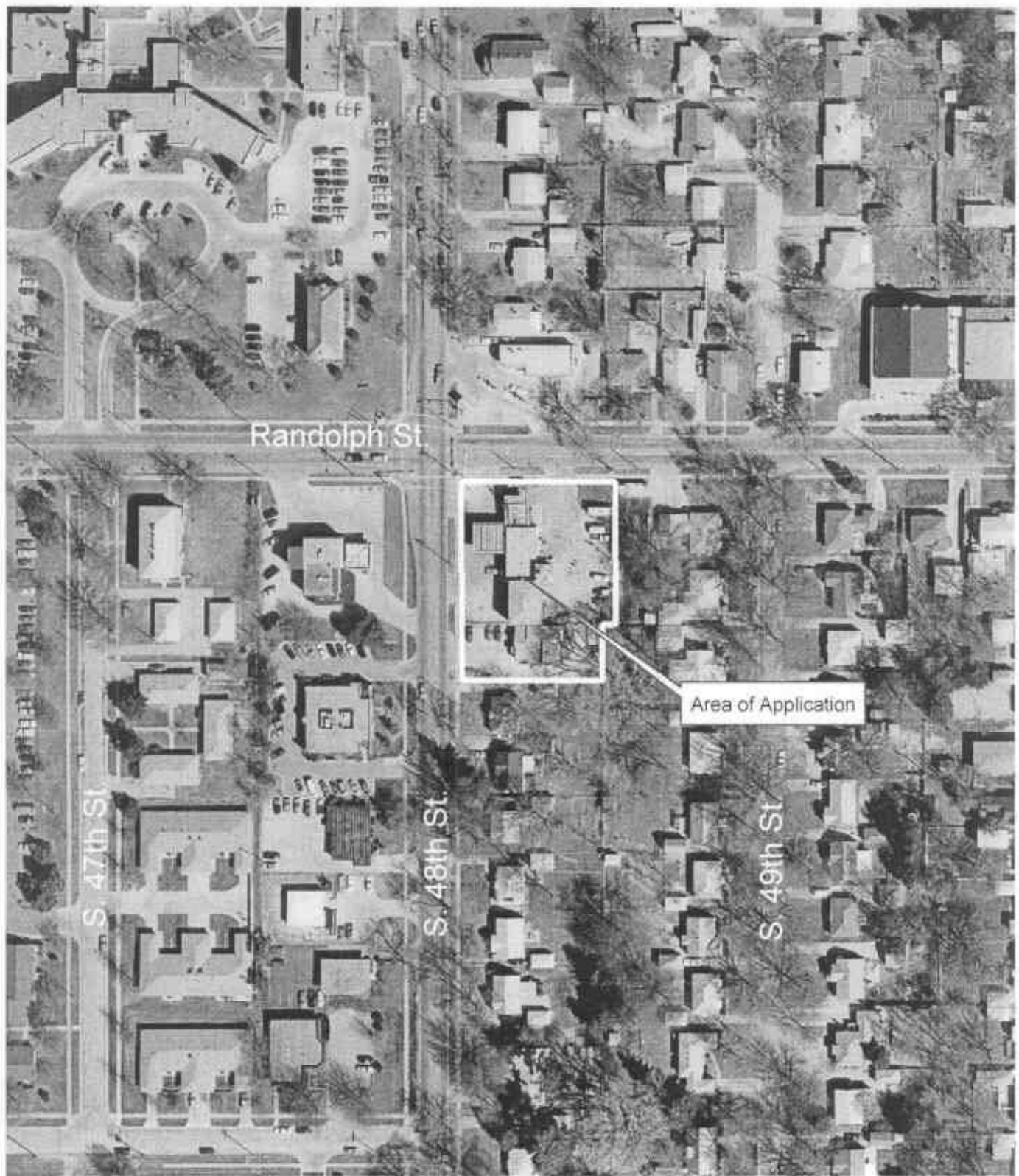
Krieser stated that he will vote to deny because the Planning Commission turned down a liquor permit at 33rd & "O" with the same situation of less than the 100' distance.

Marvin stated that he looks at the 44' measurement. If we have a vibrating bar that goes up and down and we set a precedent with the 44' distance, then he thinks the City is setting itself up for a problem in the future.

Duvall commented that this same project has been before the Commission previously and it was denied. Nothing has changed. The neighborhood has encouraged that there not be liquor in the area.

Steward stated that he will also vote to deny. His position is basically out of historic consideration, not only for some other similar projects, but this project being before the Commission on a 6-3 vote for denial at an earlier stage. Nothing physically has changed. The partitioning with the glass wall does not accommodate a distinct and less than obvious designation of an area. He intends to be consistent, personally. He can recall voting against some applications that were 90', and practically 100'. He does not think it inappropriate to consider mitigation plans as brought to us by the staff. He believes that there should continue to be the opportunity for a mitigation plan because each application and each site has its differences and there is the possibility of a different analysis. In this case, he simply does not agree that the mitigation plan satisfies waiver of the distance requirement.

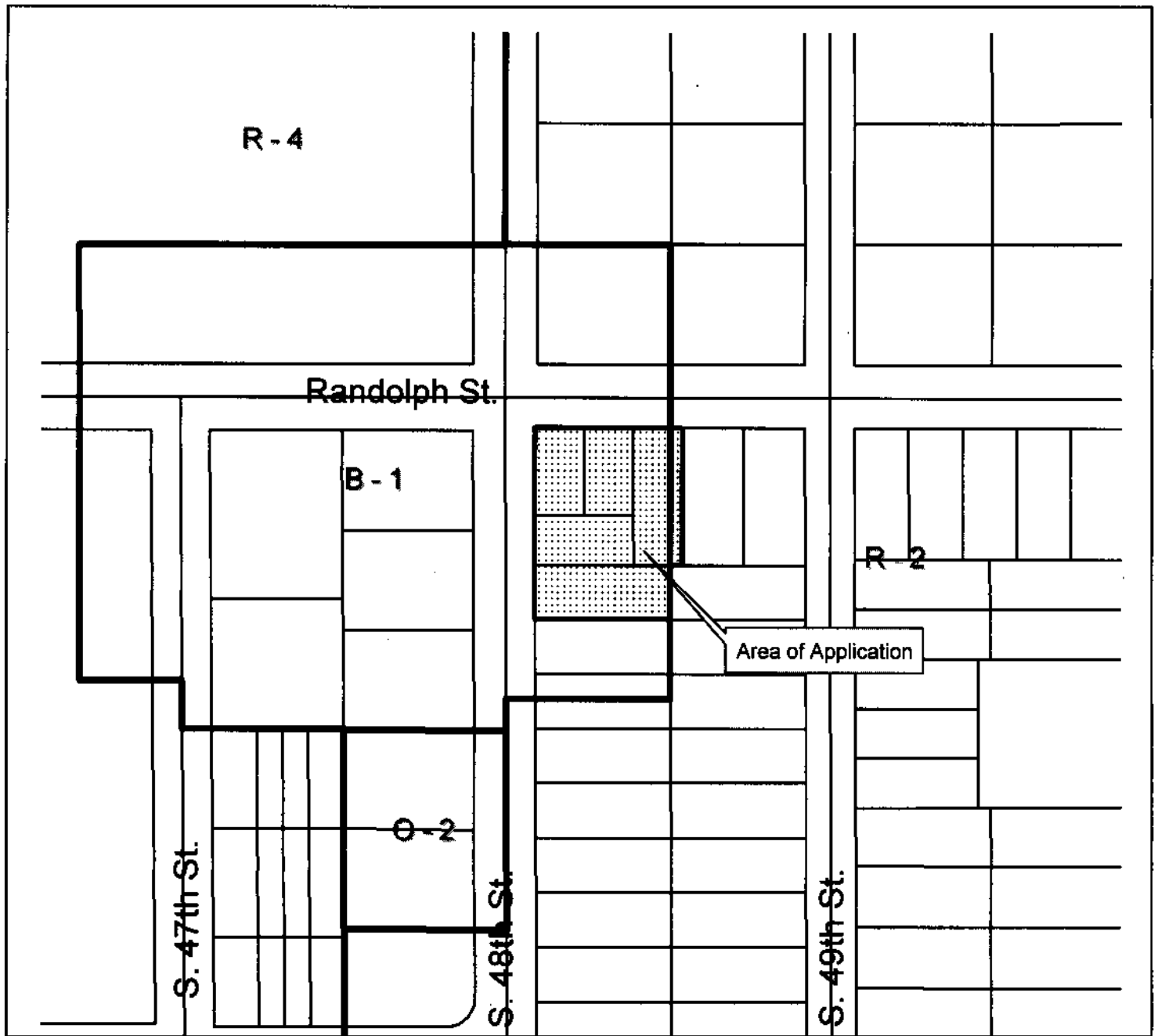
Motion to deny carried 6-1: Krieser, Taylor, Marvin, Duvall, Carlson and Steward voting 'yes'; Larson voting 'no'; Bills-Strand absent.



**Special Permit #2002
S. 48th & Randolph**



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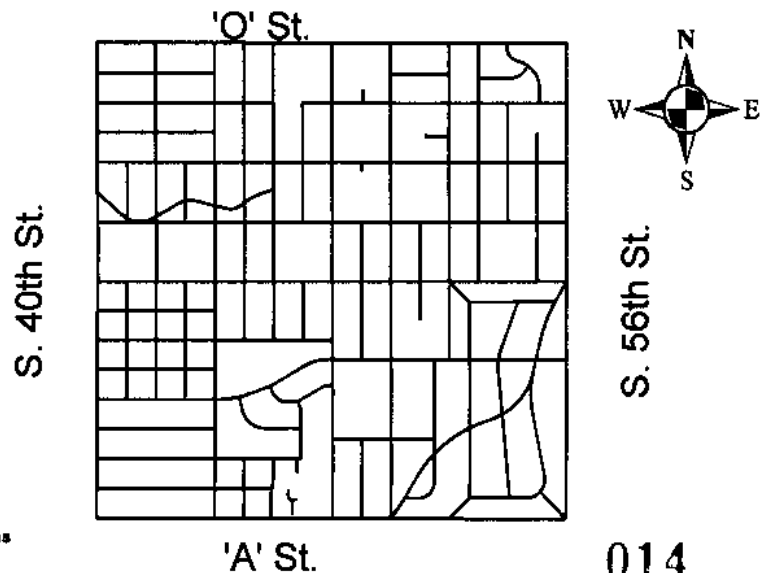
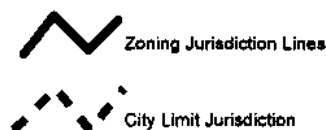
Special Permit #2002

S. 48th & Randolph

Zoning:

One Square Mile
Sec. 29 T10N R7E

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District



014

bp

Salem Oil Company

Box 81006

Lincoln, Nebraska 68501

402/476-3333



January 23, 2003

Brian Will
City Planning Dept.
555 South 10th Street
Lincoln, NE 68508

RE: 4801 Randolph Street

Brian:

The purpose of this store is to establish a full-service convenience store which will serve 1500 customers per day with a wide range of products.

We intend to be open Six A.M. to Midnight and will have six or seven employees. Our store will probably include gasoline, convenience and snack items, coffee and fountain drinks, bottles of pop and specialty drinks, and a pizza oven. We think that an off-sale beer license fits the needs of our neighbors.

Thank you,

Chuck Salem
Salem Oil Co.

Attachments:
EXHIBITS A - E

EXHIBIT "A"

Special Permit Zoning Application of Fast Break, Inc.

The Applicant is particularly aware of the requirements of Section 27-63 regarding special permits for liquor sales. The construction of this new convenience store facility replaces a formerly blighted site. The site is in an older neighborhood, and the owner and Applicant have taken and shall take measures to measure sure that lighting is designed and erected in accordance with lighting standards and that landscaping, screening and other methods that might be suggested or approved will be used to mitigate adverse effects, if any, of the proximity of the facility to any residential use.

There will be no drive-thru window used as part of the business, and no part of the operation will be conducted on any required building setback. The parking ratios are in compliance, and the business shall not have amplified outside sound or noise. No access door to the premises shall violate the requirements of Section 27-634 as specifically set forth.

The Applicant has worked with the City to provide vehicular ingress and egress to and from the property which benefits the intersection and does not disrupt the residential district.

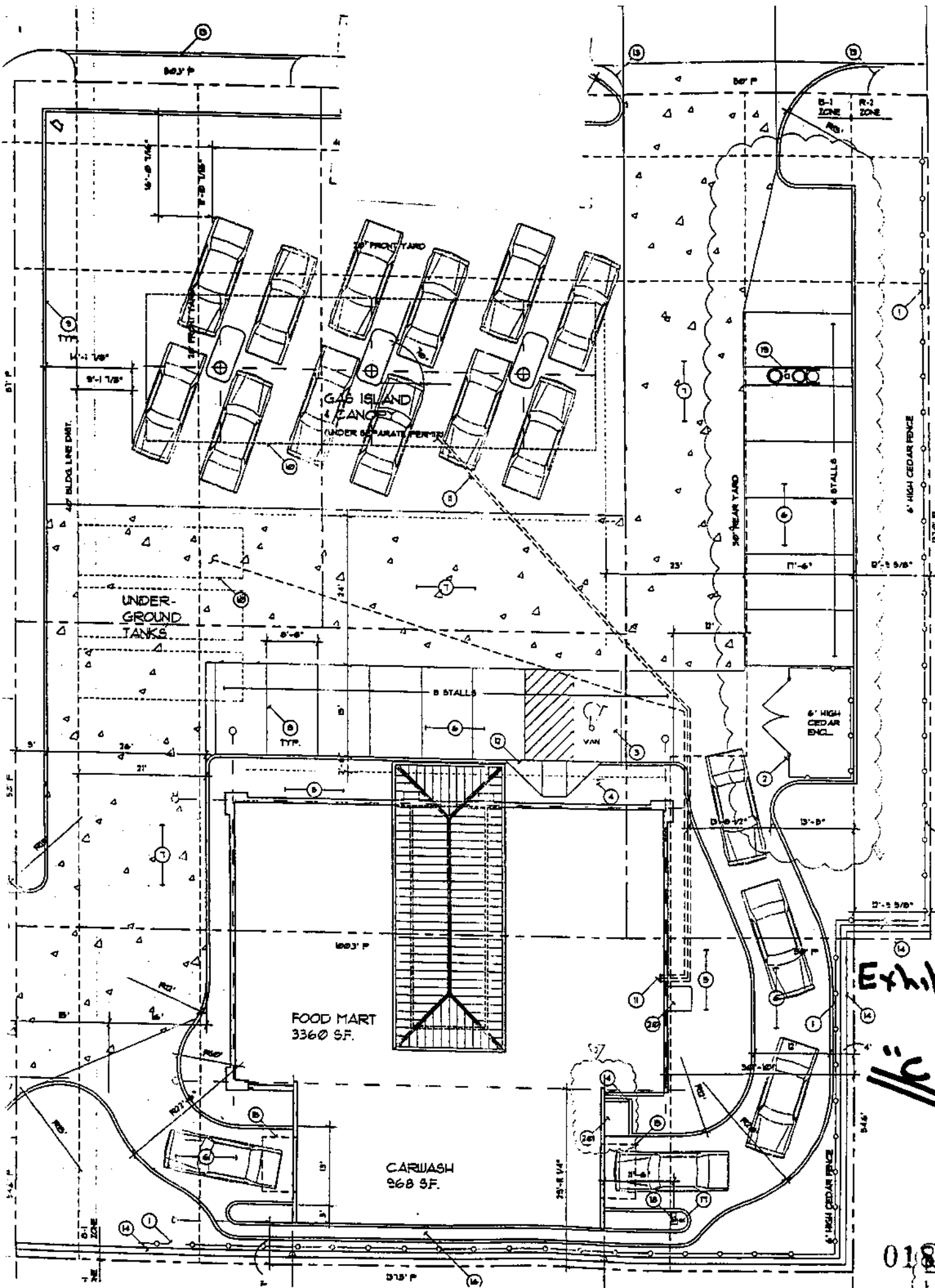
It is important to the owner and Application that the facility be incorporated into the neighborhood as opposed to standing apart from it. The Applicant will work with the neighbors and City to minimize any impact of the facility on the abutting residential neighborhood.

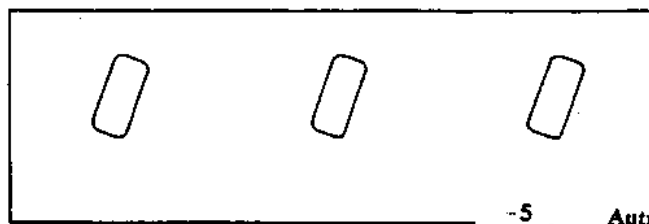
Most importantly the applicant has received the consent for the requested use from 100 % of the abutting neighbors and has received signatures of over 500 of our customers requesting that this store be allowed an off-sale license as would be permitted by this special permit.

EXHIBIT "B"
MITIGATION PLAN

4801 Randolph, Lincoln, Nebraska
Special Permit
Fast Break, Inc.
Salem Oil Company

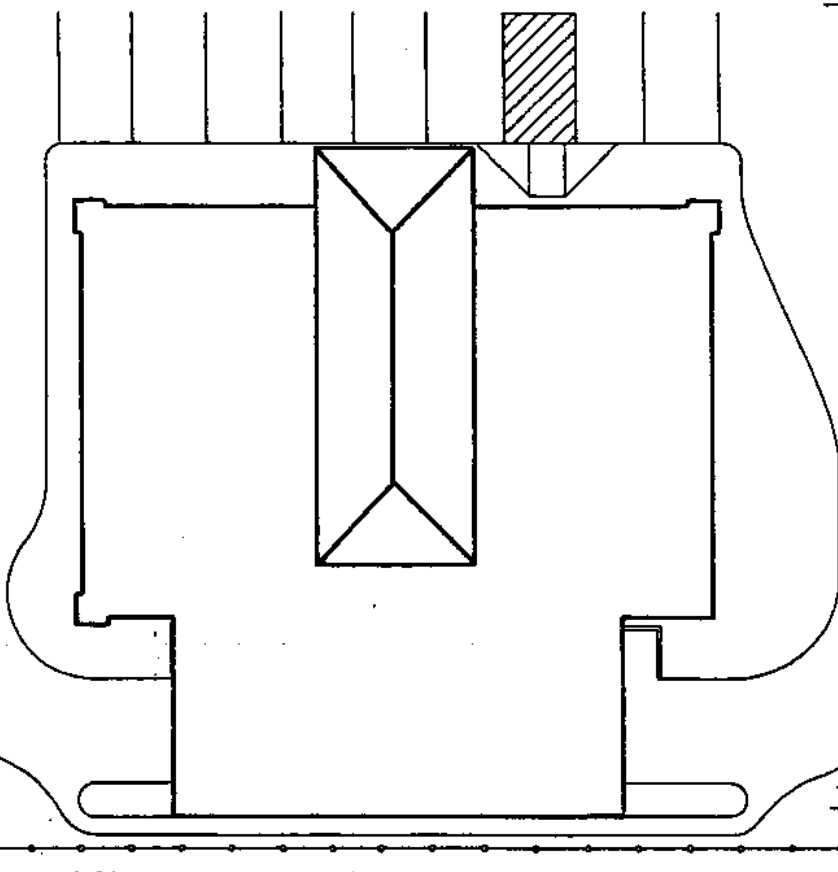
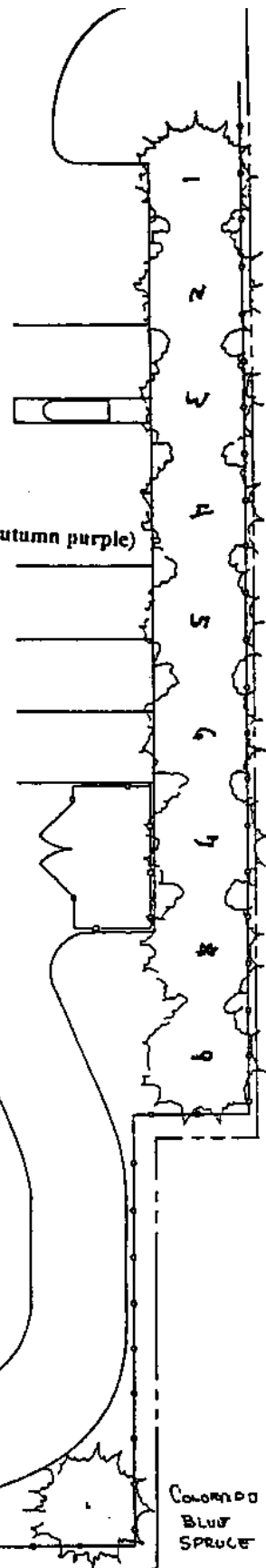
1. Site Plan/Operation. From the Start the Applicant tried to mitigate any effect that a new convenience store at this location would have on the abutting neighbors. Several different site configurations were considered, and the current site plan was the result of much consideration about the effects of lighting, noise, traffic and exit doors would have on the neighborhood. The building is north facing rather than a more desirable west facing in order to protect the closest abutting land owners. (for the Site Plan, see Exhibit "C")
- 2/3. Landscape/Fencing. Although not required or shown on the original Site Plan, the Applicant has proposed rather significant landscaping (See Exhibit "D" attached) and fencing. Our building plan also includes fencing on the south and east sides and retaining walls.
4. Seating. Seating is less than 20% of the floor area.
5. Lighting. We have taken particular caution in using lighting under the gasoline canopy which will focus the light where it is needed the most and the least amount to peripheral areas. We are sensitive to any light bleed onto neighboring properties, and that went into the design of the facility and location of the facility on the lot.
6. Entertainment. There will be no live entertainment on the premises.
7. Neighbors. The Applicant has consent of 100% of the neighbors abutting the store. (See Exhibit "E")
8. Revitalization. Please remember that this corner was a blighted site. We have received many phone calls with neighbors who were absolutely delighted with the prospect of having a full-service convenience store, especially one of this quality, being built in the neighborhood. This was not just a significant remodel, but the whole site was excavated, the previous buildings (2) were removed, and the entire site was rebuilt.
9. Hours of Operation. The Applicant would agree, as part of its mitigation plan, to limit its hours of operation to between the hours of 6:00 a.m. and 12:00 midnight. The Applicant would further agree to limit alcohol sales by ending such sales at 10:00 p.m.



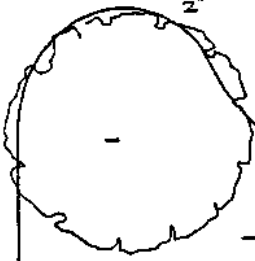


-5 / Autumn Purple Ash
Fraxinus Americana (Autumn purple)
1.5 Cal / B&B
25 spread x 40 Height

4 / Snow Drift Crab
Malus (Snow Drift)
5-6' / Container
15 spread x 20 height



Autumn Purple Ash



Column 2
Blue Spruce

Campbell's
CULTIVATING IDEAS
7000 South 96th Street
Lincoln, NE 68536
(402) 823-8556
www.campbellstheye.com

PROJECT:

FASTBREAK CONVENIENCE STORE

800 SOUTH 48th STREET
LINCOLN, NEBRASKA

DESIGNED BY:
DENNIS THEYE

DATE: 4/2002
SCALE: 1"=10'
SHEET: 1 OF 1



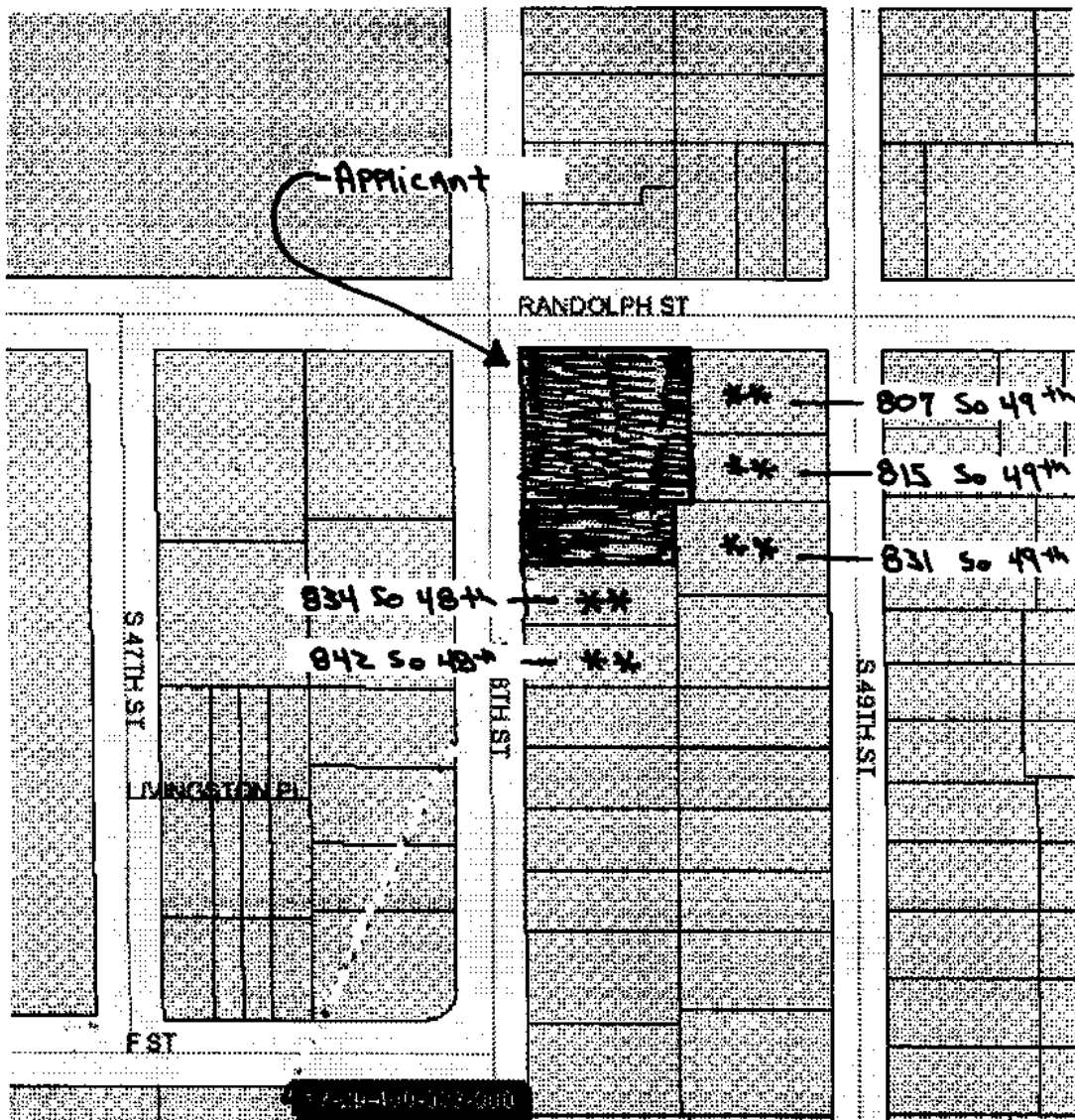
Exhibit "D"

Exhibit "E" to Special Use Permit Application

Applicant has signatures from 100% of the neighbors directly abutting the location supporting the license of the applicant for off-sale beer.

Applicant has signatures from over 500 customers in support of the application.

The following is a map of the abutting neighbors (**) who have signed in support





MICHAEL WOOLMAN
<lpd737@CJIS.CI.LIN
COLN.NE.US>

To: Brian Will <BWill@ci.lincoln.ne.us>
cc:
Subject: Alcohol Sales Special Permit # 2002

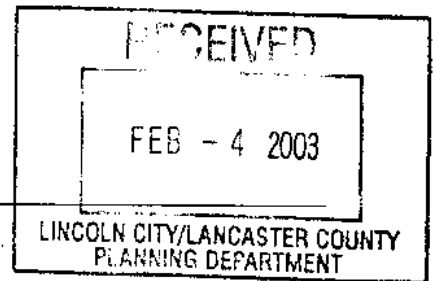
10/14/2003 02:12 PM

Mr. Will,

The Lincoln Police Department has reviewed the Alcohol Sales Special Permit #2002. The mitigation plan has been reviewed and the plan still shows the licensed portion of the building to be within 100 feet of a residential district/residential use. The Lincoln Police Department recommends denial based on the distance from a residential district/residential use. We also understand that the mitigation plan can be approved at the discretion of the Planning Director.

Sergeant Michael Woolman
Lincoln Police Department

M e m o r a n d u m



To: Brian Will, Planning Department

From: Charles W. Baker, Public Works and Utilities *BW*

Subject: Special Permit #2002, Alcohol Sales Permit, 4801 Randolph

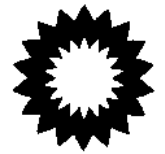
Date: February 3, 2003

cc: Randy Hoskins
Nicole Fleck-Tooze

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the site plan and has previously approved the layout and operation of the site. Public Works has no additional comments and finds the site plan satisfactory.

bp

Salem Oil Company



Box 81006 • Lincoln, Nebraska 68501 • 402/476-3333

ITEM NO. 3.2: SPECIAL PERMIT NO. 2002
(p.45 - Public Hearing - 10/29/03)

October 15, 2003

Brian Will
City Planning Dept.
555 South 10th Street
Lincoln, NE 68508

Sir:

When we opened our doors last August, we were swamped with questions about why we couldn't sell beer. In an attempt to be responsive to our customers and neighbors, we put an explanation on the board and gave everyone an opportunity to make their wishes known.

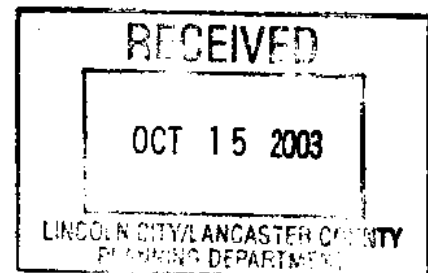
After three weeks we had approximately 600 signatures from customers wanting to purchase beer at our store and we then stopped collecting signatures.

As you probably recall, the five property owners who abut our property signed a statement that they favored a beer license at our store. That fact and the 600 signatures from customers and other neighbors should be of significance to the staff and commission as they consider our application.

Please include this information in our application.

Thank you,

Chuck Salem
Salem Oil Company



—Jean Walker

TO THE LIQUOR CONTROL COMMISSION, MAYOR,
PLANNING COMMISSION AND CITY COUNCIL:

I would like to express my support for an off-sale license for beer sales at the FAST BREAK convenience store at 48th & Randolph. This convenience store is an example of how projects like this can be added to a neighborhood and the FAST BREAK store is a very welcome addition to this neighborhood. The neighbors of this store should be able to purchase beer in the neighborhood without the inconvenience of driving to another location. Please consider this my personal request to permit an off-sale beer license at this location.

Name	Printed Name	Address	Date
Rick Winchester	Rick Winchester	1739 S. 49th	9-6-02
Angela Blum	Angela Blum	1802 S. 52th	9-6-02
J.P. Bogdan	J.P. Bogdan	5601 Randolph St	9-6-02
C. Dahl	C. Dahl	2810 Cedar Pointe Cir	9-6-02
S. Combs	S. Combs	3801 Baldwin	9-6-02
Shelley Wagner	Shelley Wagner	3330 So 44th St	9-6-02
Amy M. Sacca	Amy M. Sacca	375 So. 54th St	9-6-02
John A Gapp	John A Gapp	3519 J	9-6-02
Phil Lang	Phil Lang	3119 So 35	9-6-02
Heather Sics	Heather Sics	10963 611th	9/7

001-09-03 02:50 PM SALEM OIL CO 402-476-3333

SALEM OIL COMPANY

P.O. BOX 81006 • PHONE 402-476-3333
LINCOLN, NEBRASKA 68501

To Brian Will
Planning Dept.
City of Lincoln

Date 10-9-03

Speed Message

Subject The attached letter is Tabilhe's
way of rescinding their previous
objection to our off-sale beer
license application.

Signed

Chuck Salem



Tabitha
Health Care Services

4720 Randolph St.
Lincoln, NE
68510

Phone
(402) 483-7671
(800) 267-2986

Web
www.tabitha.org

October 6, 2003

TO WHOM IT MAY CONCERN:

Home Care Specialties

*Nursing &
Rehabilitation Center*

Adult Day Services

Home Health Care

Case Management

Meals on Wheels

*Intergenerational
Center*

Rehabilitation

Pastoral Care

Hospice

*The Tabitha
Foundation*

*Tabitha Housing
Corporation*

I am writing to express the appreciation of Tabitha Health Care Services for the considerable improvement BP Fast Break has brought to the southeast corner of 48th and Randolph Streets. They run a clean, professional operation. Clearly, they pay attention to all the details that make for an attractive and inviting place for the public. We are proud to have them as our neighbors and we wish them continued success in our neighborhood.

Sincerely,

Keith E. Fickenscher
President



temple B Church
<tbclincoffice@juno.co
m>

To: plan@ci.lincoln.ne.us
cc:
Subject: Special Permit No. 2002

10/28/2003 03:28 PM

Dear Planning Commissioner: On behalf of the Deacons and Membership of Temple Baptist Church, we wish to issue our strong objection to the issuance of a liquor license to Fast Break Inc.

1. This is a residential neighborhood with 3 churches, a nursing home and Leffler Middleschool in close proximity.

2. There are already several grocery stores and several restaurants on "O" within a half mile which sell liquor.

3. It would be unfair competition to the Sinclair gas station convenience store on the same corner which does not, to our knowledge have a liquor license.

4. We believe it would contribute to the deterioration of a decent residential neighborhood.

5. Finally, we already have enough problems removing beer cans and liquor bottles from our parking lot left by college students and teenagers who party in the neighborhood.

No, we do not need any more.

David A. Peterson
Senior Pastor
Temple Baptist Church
4940 Randolph Street
Lincoln, NE 68510

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IN OPPOSITION

ITEM NO. 3.2: SPECIAL PERMIT NO. 2002
(p.45 - Public Hearing - 10/29/03)



"Mary Morin"
<mdmorin@cornhuske
r.net>

To: <plan@ci.lincoln.ne.us>
cc:
Subject: liquor license

10/29/2003 12:33 PM

To members of the Planning Commission:

It has come to my attention that the convenience store at 48th and Randolph is seeking a liquor license. We strongly oppose this action. This convenience store is located in a residential area and there is a junior high school only a few blocks away. Please deny the liquor license.

Peter and Mary Morin
703 South 37th St.
Lincoln NE 68510



Jean L Walker

10/29/2003 04:33 PM

To: "Mike Fitzgerald" <mfitzgerald@necattlemen.org>
cc: <plan@ci.lincoln.ne.us>
Subject: Re: Special Permit #2002

Thank you for your comments. Unfortunately, I did not receive your email in time to present it to the Planning Commission at the public hearing today; however, your comments will become part of the official record and will be forwarded to the City Council for their consideration. The Planning Commission voted 6-1 to recommend denial of this special permit. A public hearing will also be scheduled before the City Council. You will receive notice of that public hearing date.

--Jean Walker, Administrative Officer
City-County Planning Department
441-6365

"Mike Fitzgerald" <mfitzgerald@necattlemen.org>



"Mike Fitzgerald"
<mfitzgerald@necattlemen.org>

10/29/2003 12:54 PM

To: <plan@ci.lincoln.ne.us>
cc:
Subject: Special Permit #2002

October 29, 2003

To: Planning Commission

Re:Special Permit #2002

I have just learned about Special Permit #2002 and want to be on record as opposed to the request for a permit to sell alcohol for consumption off the premises at 4801 Randolph Street. Our association has not had an opportunity to discuss this matter, but based on wide support for efforts that will protect and enhance the character of our neighborhood area, I believe there will be strong opposition to the request from the group.

Sincerely,

Mike Fitzgerald, President

Witherbee Neighborhood Association

Our City, Our Neighborhoods — A Plan for Action

Agenda of the Lincoln Neighborhood Alliance

items are not in any particular order

SPECIAL PERMIT NO. 2002

Neighborhood Services. Whereas neighborhood services are vital to maintaining our high quality of life.

Resolved: Lincoln's neighborhoods should have access to the full range of community facilities, health services, open space, and playgrounds. Neighborhood parks, pools, libraries, senior centers, public transit, and trails must be a high budget priority.

Sidewalks. Whereas Lincoln is forty years behind in its sidewalk maintenance, and whereas the community has twice voted that the city and not private owners should pay for the repair and maintenance of sidewalks.

Resolved: Lincoln should establish, fund, and implement a plan to rehabilitate sidewalks on a more aggressive schedule. This plan should bring Lincoln's sidewalks up to code in ten years or less.

Infrastructure Finance. Whereas impact fees reduce the burden of supporting the costs of new development on existing neighborhoods and create a more equitable and predictable means to pay for infrastructure growth.

Resolved: Impact fees should continue to be an important piece of the city's overall infrastructure financing package.

Stormwater. Whereas development in watershed areas upstream from neighborhoods frequently causes increased runoff during heavy rains and increased insurance costs for businesses and neighborhoods.

Resolved: The City should work aggressively with neighborhoods, businesses, developers, natural resources districts, and state and federal agencies to mitigate the adverse impact of development on floodplains and flooding problems.

Neighborhood Preservation. Whereas zoning designations that conflict with current or historical use patterns create increased density that is detrimental to character of existing neighborhoods, undermines home ownership, and is beyond the neighborhood infrastructure capacity (parking, water, sewer, etc).

Resolved: The city should support downzoning in neighborhoods where strong support exists.

Crime and Public Safety. Whereas crime is a growing issue of concern in our community.

Resolved: The city should support and expand community-policing practices including neighborhood police substations and neighborhood watch areas as a deterrent to neighborhood business and residential crime.

Quality of Life. Whereas Lincoln has codes to promote and protect the health, safety, and welfare of its citizens.

Resolved: Lincoln should strengthen and enforce the penalties regarding dilapidated buildings and exteriors, junk cars, trash, disorderly households, and criminal activity. Lincoln should also maintain the "no more than three unrelated persons per household" ordinance and maintain or strengthen spacing requirements for alcohol sales.

Trees. Whereas Lincoln has been nationally recognized as a Tree City USA community.

Resolved: Lincoln should replace a tree for every tree that is lost or removed and enforce tree-planting standards in new developments. Lincoln should also be diligent about replacing the trees lost over the last twenty years and in planting trees in the area between sidewalks and curbs on arterial and residential streets.

Schools. Whereas quality neighborhood schools are essential to creating and maintaining a high quality city.

Resolved: Existing neighborhood schools should be maintained and improved to a high standard. New schools should be sited and built to facilitate safe and easy walking and biking for students, safe traffic flow, and joint use of facilities.

Neighborhood Business Districts. Whereas our neighbors and neighborhoods are an integral part of and dependent upon our local economy, and whereas businesses must be sensitive to the character and needs of the surrounding neighborhood.

Resolved: The city should actively support Lincoln neighborhood businesses in neighborhood business districts.

Street Widening. Whereas widening arterial streets in older neighborhoods with narrow rights-of-way result in lower property values, loss of neighborhood character, and blight.

Resolved: Widening beyond two lanes plus a center turn lane (2+1) in older neighborhoods should not be done. 2+1 arterial streets in older neighborhoods provide smooth and safe traffic flow with less impact

Overhead Power Lines. Whereas overhead power lines are a visual blight, a safety hazard, and are more susceptible to power outages due to wind, snow, or ice storms.

Resolved: LES and city officials should develop and implement a fiscally-sound, phased program to bury Lincoln's neighborhood power lines.

version 1-26-03